

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GERALD KEETING)	
Claimant)	
)	
VS.)	
)	
BAKER CONCRETE CONSTRUCTION)	
Respondent)	Docket No. 216,891
)	
AND)	
)	
CIGNA PROPERTY & CASUALTY CO.)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier requested review of the September 5, 2006, Post-Award Medical Award entered by Administrative Law Judge Kenneth J. Hursh. The Board placed this matter on its summary docket for a determination without oral argument.

RECORD

The Board has considered the record as set out in the Post-Award Medical Award, together with the record set out in the June 26, 2003, Award.

ISSUES

The Administrative Law Judge (ALJ) found that claimant's present need for medical treatment of the cervical spine is a result of his 1996 work injury with respondent. However, the ALJ also found that only claimant's upper extremity symptoms were related to the cervical stenosis and that claimant's complaints of chest tightness, shortness of breath, dizziness, and loss of focus were not related to the work injury. Respondent was ordered to designate an authorized active orthopedic or neurosurgery specialist to provide pain medication and any reasonable and necessary treatment of claimant's cervical spinal stenosis and related symptoms in claimant's upper extremities.

The ALJ also found that certain medical bills produced by claimant were not authorized by respondent and had not been approved by the Director pursuant to the ALJ's

Award and Board's Order. Therefore, the ALJ ordered that those medical bills be considered unauthorized medical and ordered that respondent reimburse claimant for those unauthorized medical expenses to the extent claimant has unauthorized medical benefits still available, up to the statutory limit of \$500.

Respondent requests review of whether claimant is entitled to additional medical care for the accident that occurred in March 1996. In its Application for Review [of the] Award Before the Workers Compensation Board and Docketing Statement, respondent also lists an issue of whether temporary total disability benefits were due. The ALJ did not order payment of temporary total disability benefits, and respondent's brief to the Board does not brief this issue.

Claimant requests that the Board affirm the ALJ's Post-Award Medical Award.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein and having considered the parties' briefs, the Board¹ makes the following findings of fact and conclusions of law:

Claimant is an ironworker who has a long history of cervical problems. In 1985, he sustained his first neck injury, which resulted in a 1988 discectomy and fusion of C5-6 vertebrae. He was unable to work until 1991, and did not return to work as an ironworker until 1993. On March 15, 1996, claimant's first day of work for respondent, he slipped while carrying rebar on his shoulder. Claimant continued to work for respondent for one more day and then advised respondent that he had been injured.

After reviewing an MRI taken in March 1996, Dr. Craig Yorke diagnosed claimant with spinal cord compressions between C4-5 and C6-7. The MRI had shown the compressions were caused by bulging discs. In June 1996, Dr. Yorke performed discectomies at both C4-5 and C6-7. After this surgery, claimant complained of having "spells" consisting of burning in both arms, shortness of breath, and dizziness to the point of almost blacking out. After awhile, the symptoms went away. He did have a recurrence of his spells in 2000, for which he was seen by Dr. Lori Stonehocker. There are no medical records mentioning these problems again until 2006.

Claimant worked driving an ice truck from 2002 until 2005. More recently, he worked for Meier's Ready Mix driving a dump truck. He said this job consisted only of driving a truck and did not require any heavy physical work.

¹ The original Award was entered on June 26, 2003, by then Administrative Law Judge Julie A.N. Sample. That Award was appealed to the Board and modified in an Order dated December 23, 2003. By that time, Judge Sample had been appointed to the Board. She recused herself from that proceeding, and a Board Member Pro Tem was appointed. As she has determined that at this stage of the proceedings, recusal is no longer necessary, Board Member Sample has participated in this appeal and, accordingly, Board Member Pro Tem Stacy Parkinson did not participate.

Claimant stated that around the first of the year 2006, he started having problems with neck pain. Then suddenly, in March 2006, he had three or four episodes of spells where his neck swelled, his arms were burning, he had shortness of breath, and he experienced dizziness. He went to the emergency room, and the emergency room doctor took him off work. Later, he went to see his personal physician, Dr. James Seeman, who kept him off work. Dr. Seeman recommended that claimant be seen by a neurosurgeon.

On May 31, 2006, at the request of claimant's attorney, claimant was seen by Dr. Dick Geis, who is board certified in internal medicine, emergency medicine, preventative and occupational medicine, and is an independent medical examiner. Dr. Geis performed a review of claimant's previous medical records and took a history from claimant. Claimant told Dr. Geis that after his 1996 surgery, he began having spells of chest pain, shortness of breath, light-headedness, neck swelling, and burning in both arms. He complained that currently he has neck pain all of the time, with the left side hurting more than the right. He also complained of low back pain and mid back pain, with his legs going numb if he sits too long.

Dr. Geis reviewed an MRI done on April 4, 2006, that showed diffuse degenerative disk disease of the cervical spine and significant spinal canal narrowing and narrowing of the parts of the neck vertebra where the nerves come out, C3-4 and C6-7 especially. Dr. Geis opined that those conditions could cause the onset of the burning arm pain of which claimant complains and that condition is consistent with impingement at the areas where claimant had the surgery in 1996 and, therefore, probably causally related to claimant's 1996 injury.

Dr. Geis compared claimant's MRI reports of March 1996 and April 2006 and opined that the main difference is at the C6-7 level, where the April 2006 MRI revealed some disk bulging extending to the left of the mid-line and more spinal stenosis than in 1996. He said this condition develops either from natural progression or from an injury. He noted that claimant did not report an injury between 1996 and 2006.

Upon physically examining claimant, Dr. Geis found reduced cervical range of motion. He had asymmetry of the reflexes in his arms. Dr. Geis diagnosed claimant with cervical degenerative disk disease with disk herniations and spinal stenosis with radiculopathy. He believes claimant's current symptoms are related to his 1996 injury and the surgery related to that, since claimant has been symptomatic since his 1996 injury and surgery and the 2006 MRI showed a continuance of the problems he had before.

Dr. Geis believes claimant should be seen by a neurologist with regard to repeat neck surgery, as well as pain medication and temporary restrictions. Dr. Geis also thought claimant should be evaluated concerning his complaints of low back and mid back pain. Dr. Geis also said claimant was temporarily totally disabled from his truck driving job and his ironworker job.

Dr. Geis said that claimant's chest pain, shortness of breath, and light-headedness are not related to his cervical spine problem. He also believed that claimant's low back symptoms are most likely not related to the 1996 cervical spine injury and surgery.

Dr. Jerome Hanson, a board certified neurological surgeon, examined claimant on July 26, 2006, at the request of respondent. Claimant reported that since his surgery in 1996, he has had persistent pain in his neck, bilateral burning in his arms, and pain in his lower back. Claimant told Dr. Hanson that his primary reason for not being able to return to work is related to his spells, *i.e.*, pain in his neck with burning in his arms, dizziness, shortness of breath, chest pain, severe right-sided headache with blurred vision, and near-syncope.

In describing claimant's spell on March 23, 2006, Dr. Hanson said, "[T]his seemed to be a more substantial symptom complex than generally would be associated with a cervical spine problem alone."² When asked if the spells were related to claimant's cervical spine surgery, Dr. Hanson stated:

. . . never in my experience practicing or reading the medical literature have I seen cervical spine pathology produce alterations in level of consciousness, per say. I don't, I have trouble anatomically or neurophysiologically relating his cervical spine problems producing alterations in his level of consciousness.³

Upon examining claimant, Dr. Hanson found some limitation in his cervical range of motion, which is to be expected following two cervical spine surgeries. Claimant's neurologic function in his upper extremities, motor sensory, and reflex testing appeared to be within normal limits. Dr. Hanson diagnosed claimant with idiopathic near-syncope or syncope; migraine syndrome; suspected seizure disorder; multisegment cervical spondylosis at C3-4, C4-5, C6-7, with fusion at C5-6, with no evidence of radiculopathy or myelopathy; and chronic tobacco abuse.

In contrasting MRI scans of claimant's cervical spine taken in 1996 and again in 2006, Dr. Hanson testified that the changes noted in the March 1996 MRI scan have evolved, developed and progressed to become more apparent on the April 2006 MRI. The April 2006 MRI report showed evidence of moderate to severe central spinal canal stenosis, which is the narrowing or constriction of a tubular structure, in this case, in the opening in the vertebrae through which the spinal cord passes. Stenosis of the cervical spinal canal can cause neurologic problems and could cause burning, such as burning in the arms, but not pain. The MRI also showed mild right neuroforaminal narrowing, which means that the interval between C3 and C4 on the right, the space where the C4 nerve root would exit the spinal canal, has been narrowed by the degenerative and arthritic changes reported. This

² Hanson Depo. at 9.

³ *Id.* at 11.

could cause pain into the root of the neck on the right side where the neck and torso join. It could also cause pain into the right front shoulder, maybe in the anterior portion of the right upper extremity, as in the upper chest area and in the upper shoulder and upper arm.

According to Dr. Hanson, the April 2006 MRI also showed symptoms of moderate to severe narrowing and encroachment on the nerve root at the C6. The nerve root that emerges between C6 and C7 is referred to as the C7 nerve root. The C7 nerve root goes to the posterior part of the shoulder and the posterior part of the upper arm on the left side. It could cause weakness of the triceps muscle and loss of sensation in the index or middle finger or fourth or fifth finger of the left hand. This moderate to severe narrowing and encroachment of the nerve root at that level could be attributable to the surgery in 1996. However, there would be a question of what amount would be due to the prior surgery and what would be due to the natural progression of claimant's degenerative condition. Dr. Hanson noted that surgery at a level of the spine such as claimant had would at least contribute to ongoing problems and perhaps accelerate the degenerative process at that level.

Dr. Hanson believed that claimant's present condition is in part linked to his prior injuries and/or surgery. He stated that claimant had significant anatomic alterations in his cervical spine, and stenosis can be surgically corrected and treated with medication. Dr. Hanson stated that claimant's complaints of burning in both arms is not typical. Normally radicular nerve root pain follows a more precise distribution and generally is not circumferential. It does not involve the entire arms. However, he stated further that it was possible that the burning in claimant's arms may be a reflection of cervical spinal cord as opposed to nerve root involvement. Dr. Hanson stated that headaches can be a symptom of cervical difficulties. However, syncope caused by cervical spine pathology would be extremely unusual.

In *Nance*,⁴ the Kansas Supreme Court stated:

When a primary injury under the Kansas Workers Compensation Act is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury.

The court in *Nance* further stated:

The passage of time in and of itself is not a compensable injury. Thus, where the deterioration would have occurred absent the primary injury, it is not compensable. However, where the passage of time causes deterioration of a compensable injury,

⁴ *Nance v. Harvey County*, 263 Kan. 542, Syl. ¶ 4, 952 P.2d 411 (1997).

the resulting disability is compensable as a direct and natural result of the primary injury.⁵

Claimant reports a worsening of symptoms. He attributes those symptoms to his 1996 injury. He denies any subsequent accidents or injuries. The 2006 MRI shows a progression and worsening of claimant's condition since the 1996 MRI. Both Dr. Geis and Dr. Hanson attribute at least some of claimant's neck and upper extremity symptoms to the 1996 accident and surgery. The Board affirms the ALJ's conclusion that "claimant's present need for medical treatment of the cervical spine is deemed a result of the 1996 work injury."⁶

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Kenneth J. Hursh dated September 5, 2006, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of December, 2006.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jeff K. Cooper, Attorney for Claimant
Thomas R. Hill, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge

⁵ *Id.* at 550.

⁶ ALJ Post-Award Medical Award (Sept. 5, 2006) at 3.